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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.*, Plaintiffs, v. FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	Master File No. 09-CV-118-VM This Document Relates To: 09-CV-2269-VM (*Knight* Action)

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION OF THE FAIRFIELD INVESTOR GROUP FOR APPOINTMENT AS LEAD PLAINTIFF AND APPOINTMENT OF LEAD COUNSEL AND IN OPPOSITION TO COMPETING MOTIONS

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Madanes Investment & Enterprise Ltd., Carling Investment Ltd., Shimon Laor, and Arie and Dafna Gruber (collectively, the "Fairfield Investor Group" or "Group") respectfully submit this reply memorandum of law in further support of their motion for appointment as lead plaintiff and appointment of lead counsel, and in opposition to competing motions filed by (1) Securities & Investment Company (SICO) Bahrain, Harel Insurance Investments and Financial Services Ltd., Pacific West Health Medical Center, Inc. Employees' Retirement Trust, St. Stephen's School, and AXA Private Management (collectively, the "Anwar Plaintiffs"); and (2) Knight Services Holdings Ltd. and the Americas/SwissCo. Trusts (collectively, the "Knight Group").

In their opposition memorandum filed on May 29, 2009, the Anwar Plaintiffs assert that they have "demonstrated their adequacy to represent [] investors by filing the detailed CAC asserting state law claims" against the defendants. Anwar Opp. Mem. at 2. The competing motions pending before this Court, however, do not seek appointment as lead plaintiff to pursue "*state law* claims," but, rather, to pursue *federal securities* claims. Thus, the fact that the Anwar Plaintiffs have filed an amended complaint asserting state claims is not evidence of their adequacy. Indeed, it is evidence of the opposite. The Anwar Plaintiffs' amended complaint is notable for what it *did not* include; the Anwar Plaintiffs had the opportunity to include federal securities claims in their complaint, but deliberately chose not to. This is the antithesis of the "vigorous prosecution" of claims which Rule 23 requires. *Constance Sczesny Trust v. KPMG LLP*, 223 F.R.D. 319, 324 (S.D.N.Y. 2004) (adequacy turns on, *inter alia*, whether a lead plaintiff will vigorously prosecute claims). Indeed, the Anwar Plaintiffs expressly disavowed interest in pursuing federal securities claims for a number of substantive and tactical reasons. *See* Anwar Mem. at 4.

The Anwar Plaintiffs attempt to save face by stating that they "intend to assert federal securities claims in a Second Amended Complaint." Anwar Opp. Mem. at 4. Having already conceded, however, that they do not want the federal securities claims to be part of their case and expressed serious concerns about the impact of those claims on the case they are already prosecuting as Interim Co-Lead Counsel, *see* Anwar Mem. at 4-5, it should be clear to the Court that the only reason for this reversal in position is to obtain appointment as lead plaintiff. It is too late, and their current statements must be assessed in light of their previous statements and positions. The Anwar Plaintiffs have already demonstrated their inadequacy by neglecting to prosecute these claims in the first place. *See Evans v. IAC/Interactive Corp.*, 244 F.R.D. 568, 577 (C.D. Cal. 2007) ("A failure to timely prosecute the litigation … suggest[s] that the class representative is inadequate."). The presence of such a conflict, as well as the Court's obligation to ensure that federal securities claimants have a lead plaintiff and lead counsel dedicated to prosecution of their claims irrespective of the impact of their claims on state law claims, requires the appointment of a separate lead plaintiff and lead counsel.

Both the Anwar Plaintiffs and the Knight Group make much of the fact that this is the second time counsel for the Fairfield Investor Group have sought to serve as lead counsel in this litigation on behalf of one or more of their clients. Anwar Opp. Mem. at 5-6; Knight Group Opp. Mem. at 4 n.1. As they correctly note, the Court denied the previous request because, at that time, "additional co-lead counsel services [were not] necessary or in the interest of the proposed class." *Laor v. Fairfield Greenwich Group,* 09 Civ. 2222 (VM) (S.D.N.Y. Mar. 23, 2009) (Docket Entry No. 3). At that time, however, as the Court is well aware, federal securities law claims under the Securities Exchange Act of 1934 (the "Exchange Act") and the lead plaintiff provisions of the PSLRA were not implicated. Circumstances have changed. Now, it is abundantly clear that the Anwar Plaintiffs are incapable of adequately prosecuting federal securities claims under the Exchange Act, having conceded that they may abandon class members' federal securities claims altogether.

Finally, the Anwar Plaintiffs attach undue significance to the fact that their group represents purchasers of both Fairfield Sentry and Fairfield Sigma. Anwar Opp. Mem. at 6. The class definition in this action does not include purchasers of Fairfield Sigma, and, accordingly, such purchasers are not even members of the class. *See* Complaint in *Knight Services Holdings Ltd. v. Fairfield Sentry Ltd., et al.*, No. 09 Civ. 2269 (VM) (S.D.N.Y. filed Mar. 11, 2009), at ¶ 1 (defining class to include "all persons … who acquired shares of Fairfield Sentry Limited during the period March 11, 2004 through and including December 10, 2008"). Even if they were, this fact does nothing to repair the Anwar Plaintiffs' patent inadequacy to prosecute the federal securities claims.

Accordingly, the Anwar Plaintiffs' presumptive adequacy has been rebutted. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Additionally, for the reasons explained in the Fairfield Investor Group's opposition, the Knight Group lacks standing and authority to proceed in this action. Fairfield Opp. Mem. at 7-10. The Court should therefore grant the motion of the Fairfield Investor Group to (i) appoint the Group as Lead Plaintiff and (ii) appoint Cohen Milstein Sellers & Toll PLLC as lead counsel, and deny the competing motions.

Dated: New York, New York
June 8, 2009

Respectfully submitted,

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